

An Act to enable Alfred Reynolds Huntley and
John Le Gay Brereton to construct a Railway
from land near Berrima belonging to them
to and to connect the same with the Great
Southern Railway. [12th December, 1867.]

Preamble.

WHEREAS Alfred Reynolds Huntley and John Le Gay Brereton have opened coal mines and established collieries on a parcel of land situate near Berrima in the county of Camden known as the Cataract Coal Mine and in order to facilitate communication between the said coal mines and collieries and the Great Southern Railway are desirous of constructing a railway from their said coal mines to the said Great Southern Railway but as part of such proposed railway is intended to be made upon and pass through lands in the said county believed to be the property of the Crown and Messieurs Hillas and the representatives of the late William Hutchinson respectively the same cannot be made without legislative authority And whereas the said coal mines and collieries are likely to prove beneficial to the Colony and the public are concerned in promoting such an increase in and facilities for the supply of coal for local consumption steam navigation and export as would result from the construction of the said proposed railway and the traffic on the Great Southern Railway would be increased thereby it is therefore desirable to authorize by legislative enactment the construction of the said railway subject to the provisions hereinafter contained upon payment of compensation to the several parties through whose lands the same shall pass for such portions of their respective lands as may be required to be occupied thereby Be it therefore enacted by the Queen's Most Excellent Majesty

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Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

1. It shall be lawful for the promoters to make and construct a railway from the eastern boundary of their said land unto and through the land belonging to the Crown and unto and through the land known as the grant to John Atkinson now belonging to Hillas unto and through land belonging to the representatives of the late William Hutchinson unto and through land known as the grant to William Chippendale now belonging to the representatives of William Hutchinson and terminating at a point on the Southern Railway on the said land granted to William Chippendale at such termination to effect a junction between the said line and the Great Southern Railway in accordance with section ninety-nine of the Government Railways Act of 1858 such railway to be in the line described in the Schedule and as shewn on the plan thereof but so that the same shall not occupy in any part thereof a greater space in breadth than ninety-nine feet Provided that the railway shall be constructed and brought into use within the term of five years from the passing of this Act and that the promoters in constructing and connecting the same with the Great Southern Railway shall do so in a proper and workmanlike manner and repair all damages caused by so doing.

2. The ground and soil of so much of the site of the railway as passes over the lands of the said owners of land respectively and over Crown land together with such right of ingress egress and regress upon the adjacent land as may be necessary for the making and repair thereof shall be vested by virtue of this Act and without the necessity of any conveyance in the promoters for the purposes of the railway Provided that no lands vested in the Commissioner for Railways shall by virtue of this Act be vested in the promoters and nothing herein contained shall prevent the said owners from carrying on any mining operations beneath the said railway which shall not interfere with the safety of the said road and the traffic thereon and the promoters shall have no further right to the soil of the said lands beneath the surface than shall be requisite for the formation and repair of the said road by cutting embanking or otherwise Provided also that if in the exercise of the powers hereby granted it be found necessary to cross cut through raise sink or use any part of any road whether carriage road or horse road so as to render it impassable for or dangerous or inconvenient to the persons entitled to the use thereof the promoters shall before the commencement of any such operations cause a sufficient road to be made instead of any road interfered with and shall at their own expense maintain such substituted road in a state as convenient as the road interfered with or as nearly as may be and the promoters before they use the said lands of the said owners of land respectively and the said Crown land for any of the purposes aforesaid shall if required so to do separate the same by a sufficient fence from the land adjoining thereto with such gates as may be required for the convenient occupation of such land and shall also to all private roads used by them as aforesaid put up fences and gates in like manner in all cases where the same may be necessary to prevent the straying of cattle from or upon the lands traversed by such roads and in case of any difference between the owners or occupiers of such roads and lands and the promoters as to the necessity for such fences and gates such fences and gates shall be put up by the promoters as any two Justices of the Peace shall deem necessary for the purposes aforesaid on application being made to them.

3. The railway and locomotives shall be open to public use upon payment of a toll to the promoters of three-pence per ton per mile

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mile the party seeking transit supplying and loading his own trucks or waggons and all trucks when emptied shall be conveyed on their return free of cost.

Branch railways.

4. And be it enacted that it shall be lawful for the owners or occupiers of the lands traversed by the said railway to lay down upon their own lands any collateral branches of railway to communicate with the said railway for the purpose of bringing carriages to or from or upon the said railway and the promoters shall if required at the expense of such owners or occupiers make openings in the rails and such additional lines of railway as may be necessary for effecting such communication in places where the communication can be made with safety to the public and without injury to the said railway and without inconvenience to the traffic thereupon and the promoters shall not take any rate or toll or other moneys for the passing of any passengers goods or other things along any branch so to be made by any such owner or occupier or other person but this enactment shall be subject to the following restrictions and conditions (that is to say)—

No such railway shall run parallel to the said railway—the promoters shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere nor upon any inclined plane or bridge nor in any tunnel

The persons making or using such branch railways shall be subject to all by-laws and regulations of the promoters from time to time made with respect to passing upon or crossing the railway and otherwise and the persons making or using such branch railways shall be bound to construct and from time to time as need may require to renew the off-set plates and switches according to the most approved plan adopted by the promoters under the direction of their engineer.

Power to divert or alter roads.

5. For the purposes and subject to the provisions hereinafter contained it shall be lawful for the promoters their deputies agents servants and workmen and all other persons by them authorized and empowered to divert or alter the course of any road or way crossing the railway or to raise or sink any road or way in order the more conveniently to carry the same over or under or by the side of the railway.

Penalty for not substituting a road.

6. If the promoters do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted and such penalty shall be paid to the Trustees Commissioners Surveyor or other persons having the management of such road if a public road and shall be applied for the purposes thereof or in case of a private road the same shall be paid to the owner thereof and every such penalty shall be recoverable with costs by action in any of the superior Courts.

Road repairs.

7. If in the course of making the railway the promoters shall use or interfere with any road they shall from time to time make good all damage done by them to such road and if any question shall arise as to the damage done to any such road by the promoters or as to the repair thereof by them such question shall be referred to the determination of two Justices and such Justices may direct such repairs to be made in the state of such road in respect of damage done by promoters and within such period as they may think reasonable and may impose on the promoters for not carrying into effect such repairs any penalty not exceeding ten pounds per day as to such Justices shall seem fit and any such penalty shall be paid to the surveyor or other

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other person having the management of the road interfered with by the promoters if a public road and be applied for the purposes of such road or if a private road the same shall be paid to the owner thereof Provided always the said Justices shall have regard to and shall make full allowance for any tolls that may have been paid by the promoters on such road in the course of the using thereof.

8. If the line of railway cross any public highway or parish road then either such road shall be carried over the railway or the railway shall be carried over such road by means of a bridge of the height and width and with the ascent or descent by this Act in that behalf hereinafter provided and such bridge with the immediate approaches and all other necessary works connected therewith shall be executed by and be at all times thereafter maintained at the expense of the promoters Provided that with the consent of the Governor with the advice of the Executive Council it shall be lawful for the promoters to carry the railway across any highway on the level or on a swing-bridge so as to leave the road free when opened.

9. Until the promoters shall have made the bridges or other proper communications which they shall under the provisions herein contained have been required to make between lands intersected by the railway and no longer the owners and occupiers of such lands and any other persons whose right of way shall be affected by the want of such communications and their respective servants may at all times freely pass and repass with carriages horses and other animals directly but not otherwise across any part of the railway made in or through their respective lands solely for the purpose of occupying the same lands or for the exercise of such right of way and so as not to obstruct the passage along the railway or to damage the same nevertheless if the owner or occupier of any such lands have in his arrangements with the promoters received or agreed to receive compensation for or on account of any such communications instead of the same being formed such owner or occupier or those claiming under him shall not be entitled so to cross the railway.

10. If the railway cross any public highway or parish road on a level the promoters shall erect and at all times maintain good and sufficient gates across such road on each side of the railway where the same shall communicate therewith and shall employ proper persons to open and shut such gates and such gates shall be kept constantly closed across such roads on both sides of the railway except during the time when horses cattle carts or carriages passing along the same shall have to cross such railway and such gates shall be of such dimensions and so constructed as when closed to fence in the railway and prevent cattle or horses passing along the road from entering upon the railway and the person intrusted with the care of such gates shall cause the same to be closed as soon as such horses cattle carts or carriages shall have passed through the same under a penalty of forty shillings for every default therein Provided always that it shall be lawful for the Secretary for Public Works in any case in which he shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road shall be kept closed across the railway to order that such gates shall be kept so closed instead of across the road and in such case such gates shall be kept constantly closed across the railway except when engines or carriages passing along the railway shall have occasion to cross such road in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

11. In case of accidents or slips happening or being apprehended to the cuttings embankments or other works of the said railway it shall be lawful for the promoters and their workmen and servants to enter upon adjoining lands to repair accidents subject to certain restrictions.

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to enter upon the land adjoining thereto at any time whatsoever for the purpose of repairing or preventing such accidents and to do such works as may be necessary for the purpose but in every such case the promoters shall within forty-eight hours after such entry make a report to the Secretary for Public Works specifying the nature of such accident or apprehended accident and of the works necessary to be done and such powers shall cease and determine if the said Secretary shall after considering the said report certify that their exercise is not necessary for the public safety Provided also that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of and shall be executed with all possible dispatch and full compensation shall be made to the owners and occupiers of such lands for the loss or injury or inconvenience sustained by them respectively by reason of such works the amount of which compensation in case of any dispute about the same shall be settled by arbitrators in the manner hereinafter mentioned And provided also that no land shall be taken permanently for any such works otherwise than is herein provided with respect to the lands originally taken for the purpose of making the said railway.

Construction of bridges over roads.

12. Every bridge to be erected for the purpose of carrying the railway over any road shall be built in conformity with the following regulations (that is to say)—

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty feet if the arch be over a public highway and of twenty feet if over a parish road and of twelve feet if over a private road

The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road and fifteen feet for a space of ten feet if over a public carriage road and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet the clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private road

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a public highway one foot in twenty feet if over a parish road and one foot in sixteen feet if over a private road not being a tramroad or railroad or if the same be a tramroad or railroad the descent shall not be greater than the ruling gradient of such tramroad or railroad.

Construction of bridges over railroad.

13. Every bridge erected for carrying any road over the railway shall be built in conformity with the following regulations (that is to say)—

There shall be a good and sufficient fence on each side of the bridge of not less height than four feet and on each side of the immediate approaches of such bridge of not less than three feet

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a public highway and twenty-five feet if a parish road and twelve feet if a private road

The ascent shall not be more than one foot in thirty feet if the road be a turnpike road one foot in twenty feet if a parish road and one foot in sixteen feet if a private road not being a tramroad or railroad or if the same be a tramroad or railroad the ascent shall not be greater than the ruling gradient of such tramroad or railroad.

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14. Provided always that in all cases where the average available width for the passing of carriages of any existing road within fifty yards of the points of crossing the same is less than the width hereinbefore prescribed for bridges over or under the railway the width of such bridges need not be greater than such average available width of such roads but so nevertheless that such bridges be not of less width in case of a public highway or parish road than twenty feet Provided also that if at any time after the construction of the railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof the promoters shall be bound at their own expense to increase the width of the said bridge to such extent as they may be required by the trustees or surveyors of such road not exceeding the width of such road as so widened or the maximum width herein prescribed for a bridge in the like case over or under the railway.

The width of the bridges need not exceed the width of the road in certain cases.

15. Provided also that if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same or the inclination of such portion of any road as may be required to be altered or for which another road shall be substituted shall be steeper than the inclination hereinbefore required to be preserved by the promoters then the promoters may carry any such road over or under the railway or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed or of the road so requiring to be altered or for which another road shall be substituted.

Existing inclination of roads crossed or diverted need not be improved.

16. The promoters shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway (that is to say)—

Such and so many convenient gates bridges arches culverts and Gates bridges &c.

passages over under or by the sides of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed or during the formation thereof

All sufficient posts rails hedges ditches mounds or other fences Fences. for separating the land taken for the use of the railway from the adjoining lands not taken and protecting such lands from trespass or the cattle of the owners or occupiers thereof from straying thereon by reason of the railway together with all necessary gates made to open towards such adjoining lands and not towards the railway and all necessary stiles and such posts rails and other fences shall be made forthwith after the taking of any such lands if the owners thereof shall so require and the said other works as soon as conveniently may be

Also all necessary arches tunnels culverts drains or other Drains. passages either over or under or by the sides of the railway of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway or as nearly so as may be and such works shall be made from time to time as the railway works proceed

Also proper watering places for cattle or compensation in lieu Watering places. therof where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering places and such watering places shall be so made as to be at all times sufficiently

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sufficiently supplied with water as theretofore and as if the railway had not been made or as nearly so as may be and the said promoters shall make all necessary watercourses and drains for the purpose of conveying water to the said watering places

Provided always that the promoters shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the railway nor to make any accommodation works with respect to which the owners and occupiers of the land shall have agreed to receive and shall have been paid compensation instead of the making them.

Penalty on persons omitting to fasten gates.

17. If any person omit to shut and fasten any gate set up at either side of the railway for the accommodation of the owners or occupiers of the adjoining lands so soon as he and the carriage cattle or other animals under his care have passed through the same he shall forfeit for every such offence any sum not exceeding ten pounds.

Minerals not to pass.

18. The promoters shall not be entitled to any mines of coal ironstone slate or other minerals under any land whereof the surface is vested in them by virtue of this Act except only such parts thereof as shall be necessary to be dug or carried away in the construction of the works hereby authorized and such mines shall not be deemed to vest in the said promoters.

Compensation clause

19. If within twenty-eight days after the passing of this Act the said persons through whose lands the railway shall pass or any of them and the promoters shall not agree as to the amount of compensation to be paid by them for the said lands belonging to the said parties or any of them or for any damage that may be sustained by them or him by reason of the execution of the works or if any other question as to compensation shall arise under this Act the amount of such compensation shall be settled by arbitrators in manner herein-after mentioned (that is to say)—Unless both parties shall concur in the appointment of a single arbitrator each party on the request of the other party shall nominate and appoint an arbitrator to whom such dispute or other matter shall be referred and every appointment of an arbitrator shall be under the hand of such party and such appointment shall be delivered to the arbitrator or arbitrators and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other nor shall the death of either party operate as a revocation and if for the space of fourteen days after any such dispute or other matter shall have arisen and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator such last-mentioned party fail to appoint such arbitrator then upon such failure it shall be lawful for the Attorney General for the time being of the said Colony on the application of the party who has himself appointed an arbitrator to appoint such arbitrator to act on behalf of both parties and such arbitrator may proceed to hear and determine the matters which shall be in dispute and in such case the award or determination of such single arbitrator shall be final and conclusive.

Vacancy of arbitrator to be supplied.

20. If before the matter so referred shall be determined any arbitrator appointed by either party shall die or become incapable or refuse or for fourteen days neglect to act as arbitrator the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other arbitrators may proceed alone and every arbitrator so to be substituted as aforesaid shall have the

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the same powers and authorities as were vested in the former arbitrator at the time of such his death refusal neglect or disability as aforesaid.

21. Where more than one arbitrator shall have been appointed ^{Appointment of} ^{umpire.} such arbitrators shall before they enter upon the matters referred to them nominate and appoint by writing under their hands an umpire to decide any matters on which they shall differ or which shall be referred to them under the provisions of this Act and if such umpire shall die or refuse or for seven days neglect to act after being called upon to do so by the arbitrators they shall forthwith after such death refusal or neglect appoint another umpire in his place and the decision of every such umpire on the matters so referred to him shall be final.

22. If in either of the cases aforesaid the arbitrator shall refuse or for seven days after request of either party to such arbitration neglect to appoint an umpire it shall be lawful for the Attorney General for the time being on the application of either party to such arbitration to appoint an umpire and the decision of such umpire on the matters on which the arbitrators shall differ or which shall be referred to him under this Act shall be final. ^{Attorney General to appoint umpire on neglect.}

23. If when a single arbitrator shall have been appointed such arbitrator shall die or become incapable or shall refuse or for fourteen days neglect to act before he shall have made his award the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if such arbitrator had not been appointed. ^{In case of death of single arbitrator the matter to begin de novo.}

24. If where more than one arbitrator shall have been appointed either of the arbitrators shall refuse or for seven days neglect to act the other arbitrator may proceed alone and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties. ^{If either arbitrator refuse to act the other to proceed *ex parte*.}

25. If where more than one arbitrator shall have been appointed and where neither of them shall refuse or neglect to act as aforesaid such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed or within such extended time (if any) as shall have been appointed for that purpose by both of such arbitrators under their hands the matters referred to them shall be determined by the umpire to be appointed as aforesaid. ^{If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.}

26. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute and may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose. ^{Powers of arbitrators to call for books &c.}

27. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall in the presence of a Justice of the Peace make and subscribe the following declaration (that is to say)— ^{Arbitrator or umpire to make a declaration for faithful discharge of duty.}

I A.B. do solemnly and sincerely declare that I will faithfully and honestly and to the best of my skill and ability hear and determine the matters referred to me under the provisions of the Cataract Coal Mine Railway Act.

Made and subscribed in }
the presence of }

A.B.

And such declaration shall be annexed to the award when made and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor. ^{Penalty for misconduct.}

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**Cost of arbitration
how to be borne.**

28. All the costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the promoters unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters in which case each party shall bear his own costs incident to the arbitration and the costs of the arbitrators shall be borne by the parties in equal proportions unless the amount awarded shall be one-fourth less than the amount in which case the whole costs shall be paid by the claimant. Provided that if either party shall be dissatisfied with the costs allowed by the arbitrators as aforesaid the costs may be taxed by the Prothonotary or other proper officer of the Supreme Court and the amount allowed by such officer shall be the amount of costs to be paid.

**Award to be delivered
to the promoters.**

29. The arbitrators shall deliver their award in writing to the promoters who shall retain the same and shall forthwith on demand at their own expense furnish a copy thereof to the other party and shall at all times on demand produce the said award and allow the same to be inspected or examined by such party or any person appointed by him for that purpose and the amount awarded shall be paid within sixty days after the publication of such award.

**Submission may be
made a Rule of Court.**

30. The submission to any such arbitration may be made a Rule of the Supreme Court on the application of either of the parties.

**Award not void
through error in
form.**

31. No award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or error in matter of form.

**Compensation for
temporary permanent
or recurring injuries.**

32. The promoters shall make compensation and satisfaction to the said owners and occupiers—the amount of such compensation and satisfaction to be ascertained and recovered in case of difference in the manner hereby provided—for temporary permanent or recurring injury and all other damage loss costs charges and inconvenience which may in anywise be occasioned to the said owners or occupiers by the non-performance by the said promoters of any of the matters and things hereby required to be performed by them or otherwise.

**Compensation to be
made for temporary
occupation.**

33. In every case where the promoters shall take temporary possession of lands by virtue of the powers hereby granted it shall be incumbent on them within one month after their entry upon such lands upon being required so to do to pay to the occupier of the said lands the value of any crop or dressing that may be thereon as well as full compensation for any other damage of a temporary nature which he may sustain by reason of their so taking possession of their lands and they shall also from time to time during their occupation of the said lands pay half-yearly to such occupier or to the owner of the lands as the case may require a rent to be fixed by two Justices in case the parties differ and shall also within six months after the completion of the railway pay to such owner and occupier or deposit in the bank for the benefit of all parties interested as the case may require compensation for all permanent or other loss damage or injury that may have been sustained by them by reason of the exercise as regards the said lands of the powers hereby granted including the full value of all clay stone gravel sand and other things taken from such lands.

**Interpretation
clause.**

34. The following words and expressions in this Act shall have the meaning hereby assigned to them unless there be something either in the subject or context repugnant to such construction. The word "promoters" shall mean the said Alfred Reynolds Huntley and John Le Gay Brereton their heirs and assigns and any person or persons deriving title through them the word "railway" shall mean the railway hereby authorized to be constructed and in citing this Act it shall be sufficient to use the expression the "Cataract Coal Mine Railway Act 1867" the word "Justice" shall mean Justice of the Peace in and

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and for the Territory of New South Wales and where any matter shall be authorized or required to be done by two Justices the expression "two Justices" shall mean two Justices assembled and acting together in Petty Sessions and where under the provisions of this Act any notice shall be required to be given to the owner of any land or where any act shall be authorized or required to be done with the consent of any such owner the word "owner" shall be understood to mean any person or corporation who under the provisions of this Act would be able to sell land to the promoters.

35. This Act shall be deemed and taken to be a public Act and Act to be deemed a public Act. shall be judicially taken notice of as such by the Judges of the Supreme Court of New South Wales and by all other Judges Justices and others within the Colony of New South Wales and its Dependencies without being specially pleaded and the same whenever cited shall be sufficiently described as the "Cataract Coal Mine Railway Act 1867."

THE SCHEDULE HEREINBEFORE REFERRED TO.

Commencing at a point on the eastern boundary of the land of the promoters and passing in an easterly direction through Government lands to J. Atkinson's now Hillas's two thousand acre grant and through the said land in a similar direction to the boundary of W. Hutchinson's three hundred acres and through the said land in a similar direction to the boundary of W. Hutchinson's fifteen hundred acre grant and through the said land in a similar direction to the boundary of W. Chippendale's now W. Hutchinson's four hundred acre grant and through the said land in a similar direction to its junction with the Great Southern Railway.
